

EMERGENCY ADOPTION

COMMERCE AND ECONOMIC GROWTH COMMISSION

OFFICE OF BUSINESS SERVICES

TREASURY - GENERAL

DIVISION OF PURCHASE AND PROPERTY

Notice of Administrative Correction to Joint Adopted Emergency Amendment and Concurrent Proposed Amendment

Goods and services Contracts for Small Businesses

Set-Aside Program Goals and Procedures

Joint Adopted Emergency Amendment and Concurrent Proposed Amendment: N.J.A.C. 12A:10-4.1 and 17:13-4.1

Take notice that the Office of Administrative Law has discovered an error in the text of the joint adopted emergency amendment and concurrent proposed amendment to N.J.A.C. 12A:10-4.1 and 17:13-4.1 published in the August 4, 2003 New Jersey Register at 35 N.J.R. 3689(a). The text of new paragraph (a)1 incorrectly appears as "(No change.)" rather than as the intended text, included in the notice submitted for publication, "Percentages shall be measured by the total dollar value of all such set-aside contracts in comparison to the total dollar value of all publicly advertised contracts awarded by the agency within a fiscal year." This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

Full text of the corrected joint emergency adopted and concurrent proposed amendment to N.J.A.C. 12A:10-4.1 and 17:13-4.1, as it should have appeared in the August 4, 2003 New Jersey Register, follows (additions to current rule indicated in boldface thus; deletions from current rule indicated in brackets [thus]):

12A:10-4.1 (17:13-4.1) Set-aside program goals and procedures

(a) Each State contracting agency, consistent with its contracting authority, shall establish and administer a set-aside program which provides for at least 15, or the established goal pursuant to the Set-Aside Act, N.J.S.A. 52:32-17 et seq., whichever is greater, percent of the dollar value of its contracts [and of all subcontracts thereunder] to be awarded to eligible small businesses, as follows: [at least seven percent of the dollar value of its contracts and of all subcontracts thereunder to be awarded to eligible minority businesses and at least three percent of the dollar value of its contracts and of all subcontracts thereunder to be awarded to eligible female businesses, which shall be measured by the total dollar value of all such set-aside contracts in comparison to the total dollar value of all publicly advertised contracts awarded by the agency within a fiscal year.] at least five percent shall be awarded to small businesses whose gross revenues do not exceed \$500,000; at least an additional five percent shall be awarded to small businesses whose gross revenues do not exceed \$5 million; and at least an additional five percent shall be awarded to small businesses whose gross revenues do not exceed \$12 million.

1. Percentages shall be measured by the total dollar value of all such set-aside contracts in comparison to the total dollar value of all publicly advertised contracts awarded by the agency within a fiscal year.

[1.] 2. The State contracting agencies shall designate specific contracts for each of the three [distinct and exclusive] set-aside categories.

[2. The State contracting agencies shall, when they deem it appropriate, designate subcontracting goals for specific contracts which have not been set aside in their entirety.]

(b) (No change.)

(c) When a State contracting agency has made a determination that a contract [in its entirety] is suitable for set-aside purposes, the following provisions apply:

1. (No change.)

2. Invitations for bids shall be confined to either small businesses[, minority businesses or female businesses] whose gross revenues do not exceed \$500,000 or small businesses whose gross revenues do not exceed \$5 million or small businesses whose gross revenues do not exceed \$12 million, and bids from other bidders shall be rejected.

3. The State contracting agency shall reject all bids and withdraw the designation as a set-aside contract when the agency determines that acceptance of the lowest responsive bid would result in the payment of an unreasonable price or in a contract that is otherwise unacceptable pursuant to that agency's contracting statutes and rules.

[i.] 4. The State contracting agency shall notify all participating bidders of the bid cancellation, stating the reasons for the cancellation and the agency's intent to re-solicit bids on an unrestricted basis.

[ii. Except in cases of emergency, the State contracting agency shall provide an opportunity for a hearing before contract award to address the reasons for the withdrawal of the set-aside designation. This hearing shall not be considered a contested case under the Administrative Procedures Act.]

[4.] 5. (No change in text.)

[(d) When the State contracting agency has made a determination that a contract is suitable for subcontract set-aside designation, the following provisions apply:

1. The public advertisement shall include the address and telephone number of the New Jersey Department of Commerce's Set-Aside and Certification Office and a notice to prospective bidders that set-aside goals, or reasonable efforts as required in N.J.A.C. 17:13-4.2 (12A:10-4.2), must be met by any contractor receiving an award.

2. The RFP shall contain a standard form by which the bidder shall certify that it will comply with New Jersey laws pertaining to set-aside contracts and is aware that it is subject to

criminal and civil penalties, including debarment, in the event of non-compliance.

3. The RFP shall contain a detailed notice to bidders advising the following:

i. The RFP includes a set-aside form (or forms) considered a mandatory requirement to be completed and included as a part of the bidder's proposal.

ii. Failure to complete and submit the form(s) shall be sufficient basis to deem the bid proposal non-responsive and thus subject to mandatory rejection.

iii. The set-aside form(s) completed by the bidder shall convey information in sufficient detail to permit the contracting agency to effectively assess the bidder's plan for attaining the specified set-aside goal or documenting the bidder's good faith effort to meet the set-aside goal.

4. The award of any contract subject to set-aside goals shall be made, in accordance with the State contracting agency's applicable statutes, rules and procedures, to the bidder whose proposal meets or demonstrates a good faith effort to meet the set-aside goals.]